IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.187 OF 2004

Shri I.H.Khan,
Assistant Commissioner of Customs ...Applicant

Vs.

Shri Shailesh Lavu Patil & Ors. ...Respondents

Shri D.N. Salvi for the Appellant.
Shri A.S. Khandeparkar i/by M/s.Khandeparkar and Associates for the Respondent Nos.1 to 4.
Shri U.V.Nikam, A.P.P for the State.

CORAM : A. S. OKA, J.
DATE : NOVEMBER 15, 2006.

P.C.:

1. The submissions of the learned counsel appearing for the parties were heard on the last date. The submissions were heard on the prayer for grant of leave to prefer an Appeal. The Respondents-accused were charged for offences under section 135(1)(a) and 135(1)(b) of the Customs Act, 1962 read with Import Control Order No.17/55 dated 07th December, 1955 issued by the Union of India under the provisions of the Import and Export (Control) Act, 1947 and punishable under section 135(1)(i) of the said Act of 1962 read with section 120B of the Indian Penal Code.

2. According to the case of the prosecution, an

information was received that on 06th February, 1987 certain contraband goods were likely to be transported in a truck. Accordingly, a particular road was blocked and a truck was intercepted early in the morning on 07th February, 1987. The first Respondent -accused No.1 was piloting the said truck on his scooter. When he saw the presence of police, he escaped. The persons travelling in the truck also managed to run away taking advantage of the darkness. However, contraband goods were seized. The truck and the contraband goods were handed to the Superintendent of Customs at Devgad. According to the prosecution the value of the contraband goods, truck and scooter was Rs.1,39,50,490/-. The allegation of the prosecution is that the Respondents were concerned in the transporting, harbouring, keeping, concealing, selling or in any other manner dealing with the goods of foreign origin which were seized, which they knew or had reason to believe were liable for confiscation under section 111 of the said Act of 1962. The Respondents are the accused Nos.1,2, 4 and 5. The trial against the accused No.3 was separated.

3. By the impugned Order, the learned Trial Judge

held that the Applicants have failed to prove the prosecution case against the Respondent Nos.1 to 4.

4. After having heard the learned counsel appearing for the parties, I find that no case is made out for grant of leave.

5. The prosecution relied upon the statement of the Respondent Nos.1, 2, 4 and 5 recorded under section 108 of the said Act of 1962. P.W.1 Shri Bhalchandra Ganesh Kulkarni who allegedly recorded the statements of the said accused stated that he did not inform the accused that they were not bound to give their statements and their statements were likely to be used against them in the court of law. The statements have been recorded when the accused were in magisterial custody. Applications have been filed by the accused Nos.1, 2, 4 and 5 for retraction of the said statements. P.W.1 admitted that the Respondent Nos.2 and 4 made complaints through their Advocate that the police had beaten them and their signatures and thumb impressions were obtained forcibly. Even the Respondent No.1 made complaint that his statement was got forcibly recorded from him. The Respondent Nos.1

to 4 retracted their statements.

6. The learned Trial Judge noted that the representative sample of the seized goods was not shown to the P.W.1, P.W.6 and P.W.5 and hence, the said witnesses did not identify the representative sample.

7. Considering the material on record and after appreciating the oral evidence on record, the learned Judge has passed an order of acquittal. The view taken by the learned Judge is obviously a possible view which could have been taken on the basis of evidence on record. Even assuming that another view is possible to be taken, no interference can be made in an Appeal against acquittal. It is well settled principle that acquittal of accused after trial further strengthens the presumption of innocence in favour of the accused. No case is made out for grant of leave. Appeal is dismissed.

JUDGE